IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 761/2004.

Manguesh Raghuvir Bandodkar. ..... Applicant.

V/s.

Messrs Saglani Industries. ..... Respondents.

Mr. D.N. Moratgikar, Advocate for the applicant.

Mr. J. A. Lobo, Advocate for the respondents.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 23RD FEBRUARY, 2006.

P.C.

Heard the Advocates for the parties. Perused the application under consideration. This is an application for condonation of delay of 140 days in filing the review petition.

2. This Court, by Order dated 1.4.04, had dismissed the second appeal No.10/04 after hearing the Advocates for the parties. It is the case of the applicant that a certified copy of the order dated 1.4.04 was obtained on 15.5.04, but the same went missing in the office of the Advocate and could be located only on 16.6.04 and thereafter, the petitioner approached the High Court and obtained

various certified copies. It was after such exercise that the present application was filed on 29.9.04. It is the applicant's case that the applicant who is a senior citizen, had suffered heart attack and undergone bye-pass surgery and as such, there was delay in filing the review application, which is neither intentional nor deliberate.

3. On the other hand, it is the case of the respondent that the applicant has not shown sufficient cause for condonation of delay, apart from the fact that there is no material placed on record as to the heart attack or the bye-pass surgery if the applicant had undergone. The applicant has also not disclosed as to when he had heart attack and undergone the bye-pass surgery. It is also the case of the respondents that the applicant lacks bona fide.

4. The learned Advocate for the applicant while placing reliance in the decision of the Apex Court in the case of **Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma.,** reported in AIR 1996 SC 2750, submitted that the approach of the Court should be pragmatic, but not pedantic while dealing with such applications and any lapse on the part of the Advocate for the party, the party should not be made to suffer. The learned Advocate for the respondent, on the other hand, submitted that the applicant has not been able show any sufficient cause for the condonation of delay.

5. A perusal of the application apparently discloses that apart from merely claiming that the certified copy of the order dated 1.4.04 was missing from the office of the Advocate and that the applicant had suffered heart attack and undergone byepass surgery, nothing is placed on record which could satisfactorily explain the delay of 140 days in filing the review application. First of all, for the purpose of filing review application, certified copy of the order, review of which is sought for, is not necessary. Nothing prevented the applicant from obtaining an authenticated copy of the order dated 1.4.04 for the purpose of filing the review application. There is absolutely no material to disclose as to when the applicant suffered the heart attack or had undergone bye-pass surgery. Besides, the application itself discloses that the Advocate was already entrusted with the matter for the purpose of filing the review application as long as on 15.4.04 and the certified copy which was stated to have been missing, was located on 16.6.04. Though, it has been stated that various certified copes were obtained thereafter, it is not explained as to how certified copies of various other documents could be relevant for the purpose of review of the Order passed by this Court on 1.4.04. There is absolutely no explanation for the delay from 1.5.04 till 29.9.04. Being so, there is absolutely no satisfactory explanation placed on record to condone the delay of 140 days. The decision of the Apex Court in the case of **Special Tehsildar, Land Acquisition, Kerala (supra)** relied upon by the applicant is of no help in the

matter in hand to the petitioner.

6. For the reasons stated above, the application is rejected.

R.M.S. KHANDEPARKAR, J.

ssm.